IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2341 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shri Umashankar M. Kumbhar & Ors. .. Respondents

AND

WRIT PETITION NO.2342 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shrirang Ramchandra Suryavanshi & Anr. .. Respondents

AND

WRIT PETITION NO.2343 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shri Narendrakumar Rammurat Shukla & Anr. Respondents

AND

WRIT PETITION NO.2344 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shri Shridhar Gopal Kamble & Ors. .. Respondents

AND

WRIT PETITION NO.2345 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shri Harishchandra G. Ghanekar & Ors. .. Respondents

AND

WRIT PETITION NO.2346 OF 2003

M/s. SWAN MILLS LTD. .. Petitioner
Versus
Shri Lalchand Biharilal Tiwari & Ors. .. Respondents

WITH APPELATE SIDE

WRIT PETITION NO.6568 OF 2003

Lalchand Biharilal Tiwari & Ors. .. Petitioners
Versus
M/s. SWAN MILLS LTD. .. Respondent

AND

WRIT PETITION NO.2486 OF 2004

Harischandra Ganu Ghanekar .. Petitioner
Versus
M/s. SWAN MILLS LTD. .. Respondent

AND

WRIT PETITION NO.3007 OF 2003

Shridhar Gopal Kamble .. Petitioner
Versus
M/s. SWAN MILLS LTD. .. Respondent

Mr.V.P.Vaidya for petitioner in W.P. Nos.2341, 2342, 2343, 2344, 2345 and 2346 of 2003

Mr.I.A.Engineer for Respondent

Mr.I.A.Engineer for petitioners in W.P.No.2486/04, 3007/2004 & 6568/2003

Mr.V.P.Vaidya for respondent

CORAM : DR.D.Y.CHANDRACHUD, J.

DATE : 25TH JULY, 2006.

P.C.:

1. In this batch of writ petitions, the Court has been moved under Article 226 of the Constitution by the Management of Swan Mills and by the workmen to challenge orders passed by the Industrial Court in appeals under the Bombay Industrial Relations Act, 1946. Swan Mills had a Cotton Textile Mill with units at Kurla and Sewree. The Sewree Unit was a Process House whereas Spinning and Weaving activities were carried out at Kurla. On 27.1.1989 the establishments both at Kurla and at Sewree were closed down by the then Management. It is common ground that the provisions of Chapter-VB of the Industrial Disputes Act, 1947 applied at the material time since nearly 5000 workers were employed. The closure was illegal since no permission of the appropriate Government was taken nor was closure compensation paid. The Mills came to be declared as a Sick Undertaking by an Order passed by BIFR on 11.2.1988 under The Sick Industrial Companies (Special Provisions) Act,1985. Before the BIFR proposals were invited for the revival and rehabilitation of the Mill and it has been stated that the proposal submitted by the present promoters came to be accepted.

2. On 5.2.1991 an MOU was entered into between the

Management and Rashtriya Mill Mazdoor Sangh, which was a recognised Union. The MOU contemplated that the Management of the Mill shall operate the Spinning departments of the Mill together certain other departments which were spelt out in clause (2) thereof. These departments were Winding, Watch and Ward, Engineering and Electrical departments and the Rationing Shop. All other departments save and except for the Spinning department and the departments mentioned in clause (2) of MOU were to be closed down. Clause (5) to the MOU contemplated that upon reopening of the Mill compensation equivalent to 15 days' average pay/wages for each year of continuous service would be paid as ex-gratia to all those employees who were willing to tender their resignations, together with other legal dues including gratuity. Clause (7) of the MOU contemplated that gratuity and other unpaid dues such as bonus, earned wages and leave with wages would also be liable to be paid. Finally it may be noted that clause (10) of the MOU provided that no wages would be paid from 27.1.1989 until the date of absorption to those workers who were to be absorbed under the agreement, but the management had agreed to pay a lumpsum amount of Rs.20 lacs in lieu of lay-off compensation to those workers who remain in employment. The agreement did not make any

provision in respect of those workers who were not to tender their resignations and whose departments were not to be resumed after the date of the MOU. In pursuance of the MOU the company resumed operations only in the Spinning department and in the other departments mentioned in clause (2) of the MOU. This batch of workers was engaged in departments other than the Spinning Department to whom employment was not provided on and after 27.1.1989 either by the previous Management or by the new promoters after the Scheme came to be sanctioned by BIFR. BIFR sanctioned the Scheme for rehabilitation on 20.2.1992. The Scheme as sanctioned contemplated that the new promoters would recommence operations only of the Spinning Unit. Clause-2.2 of the Scheme envisaged that retrenchment compensation in the amount of Rs.950 lacs was taken into account. The amount for the payment of over due liabilities of workers was Rs.210 lacs. Clause 2.4 of the Scheme envisaged that consequent on the closure of the weaving and processing sections, retrenchment of about 2150 workers and 488 persons in other cadres was envisaged, to whom a total retrenchment compensation of Rs.850 lacs was contemplated.

3. The workers in this batch of petitions moved the

Labour Court through proceedings under the Bombay Industrial Relations Act,1946. The Labour Court has come to the conclusion that the conditions precedent for retrenchment under the law were not followed. The witness who deposed on behalf of the management admitted that the workmen were not paid their legal dues. The Labour Court noted that there was not even an offer for the payment of legal dues. No seniority list was published and the principle of 'last come first go' under Section 25(G) was not followed.

4. It is an admitted position before the Court that the Mills subsequently closed on 17.12.1998 and all operations have ceased thereafter. On these facts, the labour court granted relief of reinstatement with 25% backwages to the workmen who are before the Court in Writ Petition Nos.2341, 2342, 2345, 2346 of 2003. In the case of the workmen covered by Writ Petitions No.2343 and 2344 of 2003, the Industrial Court modified the order of reinstatement by granting a lumpsum compensation of Rs.1 lac in lieu of reinstatement. The orders of the Industrial Court granting a lumpsum compensation in lieu of reinstatement have been challenged by the workers in the petitions filed on the appellate side and which have

been directed to be heard with the companion batch.

5. There is no dispute about the factual position that the workers in the present case had rendered long years of services. The learned counsel appearing on behalf of the Management and the workers have agreed in stating before the court that the workers in Writ Petition Nos.2342, 2344 and 2345 of 2003 were in service since 1966, 1964 and 1961 respectively. These three workers had put in between twenty three and twenty eight years of service on the date of closure. The workers in Writ Petition Nos.2341, 2343 and 2346 of 2003 were in service since 1983, 1980 and 1982 respectively. The initial act of closure of the Mills in January 1989 was unlawful. Though admittedly the provisions of Chapter-VB of the Industrial Disputes Act, 1947 applied no recourse was taken to the relevant provisions of law: no permission of the appropriate Government was ever sought or granted. Similarly, it is undisputed that no closure compensation was paid to the workers in these proceedings after the new promoters stepped into the scene. The Memorandum of Understanding that was entered into with the recognised union in February 1991 contemplated that those workers who were wiling to resign would be paid compensation as

stipulated therein. The workers in this batch of petitions admittedly did not resign at any stage. There was no severance of the relationship of employer and employee qua the workmen in these proceedings. The scheme which was sanctioned by the BIFR contemplated that the Spinning Department would be restarted. However, even if the services of the workmen governed by these proceedings were not to be continued since the departments in which they were engaged were not to be restarted recourse was required to be taken to the relevant provisions of Industrial law for dispensing with their services. That was not done.

6. In the present case, there is no dispute about the fact that none of the workmen was retrenched in accordance with the law. In these circumstances, the findings of the Labour Court, which were confirmed in appeal by the Industrial Court that the workmen were shut out unlawfully cannot be faulted. The Labour Court awarded reinstatement with 25% backwages to the workmen on the rationale that the Mill was declared as a sick undertaking and an MOU was entered into with the recognised union. The Industrial Court has in two cases (Writ Petition Nos.2343 and 2344) substituted the order for reinstatement with 25% backwages

by ordering the Management to pay a lumpsum compensation of Rs.One lac.

7. Section 18(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, makes provisions for the preparation and sanctioning of schemes. Sub-section (1) of Section 18 provides for measures which a scheme must address itself to. Thus, a scheme has to provide inter alia for the financial reconstruction of a sick industrial company (clause (a)) and for the proper management thereof (clause (b)). Clause (da) of Sub-section (1) provides that a scheme may incorporate measures for the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law. Clause (da) was introduced by Amending Act 12 of 1994. The Statement of Objects and Reasons accompanying the Bill inter alia, provides that the amendments which were proposed sought "to remove certain ambiguities and strengthen internal coherence of the Act by refining certain provisions which are clarificatory in nature." Sub-section (8) of Section 18 provides that on and from the date of the coming into operation of a sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee company or, as the

case may be, the other company and also on shareholders, creditors, guarantors and employees. The provisions of Section 18(1)(da) which were inserted by the Amending Act of 1994 are clarificatory. Parliament has reiterated the basic premise that a rationalisation of personnel, staff and workmen must be in accordance with law. The scheme that was sanctioned in the present case, consistent with the provisions contained in the Act, does not override the lawful entitlement of workers such as those involved in the present case. The scheme contemplated that basically it was only the Spinning Department that would be revived together with other ancillary departments to which a reference is made in the scheme. The scheme provided for the grant of certain benefits to workmen who were prepared to resign from service. As for the rest, it is only evident that the severance of their status as workmen had to be brought about in accordance with law. The services of workmen engaged in departments which were not being revived would, therefore, have to be dispensed with in accordance with the substantive provisions contained in the Industrial Disputes Act, 1947. There is nothing in the scheme, based as it is on the relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, to evince an intent to override the lawful

entitlement of the body of workmen whose services could not be continued as a result of the closure of their departments, otherwise than by following the provisions of law.

8. The management had in another proceeding before this Court, (M/s. Swan Mills Ltd. vs. Shri Shamrao Shankar Vaidya & Anr. Writ Petition No.847 of 2003) challenged an order passed by the Labour Court granting reinstatement with backwages to the workmen therein. A Learned Single Judge of this Court, Hon'ble Mrs.Justice Nishita Mhatre, while dismissing the Petition held that under the MOU of 5.2.1991 entered into between the Management, the new promoters and Rashtriya Mill Mazdoor Sangh, it was agreed that the new promoters will restart the Mill in a phased manner and employ only such employees as were required for starting the Mill. A further agreement was stated to have been entered into on 28.9.1992. The Learned Single Judge held that these agreements were not settlements under Section 44 r/w Section 114 of the Bombay Industrial Relations Act, 1946 since those agreements were not registered. The learned single judge consequently held that these agreements or settlements had no force of law under the Bombay

Industrial Relations Act, 1946 in relation to the workers who were employed in the Mills. An appeal against the judgment of the learned single judge was dismissed by a Division Bench consisting of Mr.Justice H.L.Gokhale and Mr.Justice R.S.Mohite, on 13.10.2003 (Appeal No.737 of 2003 in Writ Petition NO.847 of 2003). Undoubtedly, the workers were engaged there in the Process House which the Division Bench noted was found to be running even after the date of the closure. However, the Judgment of the Learned Single Judge did contain a specific finding on the enforceability of the settlements in the context of the BIR Act which was adverted to in the judgment of the Division Bench in appeal. That finding was not disturbed. The appeal was dismissed, thereby rendering finality to the determination of the character of the settlements qua the B.I.R. Act.

9. The admitted position is that since 17th December, 1998 the Mills have been closed and no operations have continued thereafter. In the circumstances, there is no question of the workers being reinstated in service, in view of this development which has taken place. It would be just and proper for this Court to pass an appropriate order directing the Management to pay compensation to the

workmen in lieu of reinstatement. The compensation would have to be tailored keeping in mind all relevant factors including the length of service and the loss of future employment.

10. Mr. Vaidya, the learned counsel appearing on behalf of the Management has placed on record a Chart reflecting the wages that would have become payable to the workmen had they been taken back in service from January 1992 by the new promoters. The Chart reflects the total wages that would be payable to the workmen for a period of 78 months between January 1992 and December, 1998. The ends of justice would be served if a total of 60 months' compensation is allowed to the workmen concerned in Writ Petition Nos.2342, 2344 and 2345 of 2003. These three workers, as noted above, had admittedly worked since 1966, 1964 and 1961 respectively. In respect of the remaining three workers concerned in Writ Petition Nos.2341, 2343 and 2346 of 2004 the ends of justice would be met if the lumpsum compensation is quantified at 50 months' wages. As an index compensation, the wages that would have been drawn in 1998 at the time of closure, as reflected in the Chart submitted by the learned counsel appearing on behalf of the Management have been adopted.

11. The workmen in Writ Petition Nos.2342, 2344 and 2345 of 2003 shall accordingly be paid a lumpsum compensation in lieu of reinstatement quantified at Rs.2,00,000/=. These three workmen shall also be entitled to be paid gratuity and retrenchment compensation in accordance with the MOU dated 5.2.1991.

12. The workmen in Writ Petition Nos.2341 and 2346 of 2003 had worked since 1983 and 1982 respectively. In the case of these two workmen, the lumpsum compensation in lieu of reinstatement (computed at 50 months' wages on the basis of the figures reflected in the Chart submitted by the learned Counsel appearing on behalf of the Management) shall be at Rs.1.70 lacs each. Both these workers shall also be paid gratuity and retrenchment compensation in accordance with the MOU. All the aforesaid payments shall be made within a period of three weeks to the respective workmen.

13. So far as the workman in Writ Petition No.2343 of 2003 is concerned, the Industrial Court has granted lumpsum compensation quantified at Rs.1,00,000/= in lieu of reinstatement. The Court has been informed that the

aforesaid order has not been challenged by the worker. The Petition filed by the Management challenging the Order of the Industrial Court shall stand dismissed.

14. The workmen are hereby permitted to withdraw the amounts which have been deposited in this Court in the respective Petitions pursuant to the interim orders. The amount shall be adjusted against the compensation that is due and payable by the Management pursuant to this judgment and order.

15. All the aforesaid petitions are disposed of in the aforesaid terms.

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